IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3631 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DEVENDRABHAI B CHATURVEDI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3631 of 2002

MR PRADEEP PATEL for Petitioner No. 1

MR AY KOGJE, AGP, for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 2

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 08/10/2002

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution, the petitioner has challenged the

communication dated 14-9-2001 from the State Government in the Finance department rejecting the petitioner's application for appropriate pay fixation inasmuch as the petitioner was not granted the benefit of increments during the period of probation even after successful completion of the probation period. The petitioner was given the benefit of only one increment upon successful completion of the probation and not the benefit of annual increments for the entire period of probation.

2. Since the petitioner's case is squarely covered by the decision of this Court (Coram: Hon'ble Mr Justice RC Mankad) in Special Civil Application No.5037 of 1981 decided on 1-7-1983, it is not necessary to set out and deal with the contentions raised exhaustively. Suffice it to state that the petitioner was appointed as a Sales Tax Officer on probation by Government Resolution dated 24th September, 1975 (Annexure A) wherein clause (8) read as under:-

"The initial pay fixation of these officers will be done as per rules of the Gujarat Civil Service (Pay) Rules in existence and orders on the subject."

It is stated by the learned counsel for the petitioner that the petitioner's appointment was not on any fixed pay but the petitioner was appointed in the time-scale of Rs.650-30-740-35-810- EB-35-880-40-1000 -EB -1200

The probation period was over and the petitioner was appointed on long term basis w.e.f 1st April, 1979. The petitioner requested the Government to grant the petitioner increments for the aforesaid period from 25th September, 1975 when the petitioner joined service till 31st March, 1979 which was the last date of his probation period. The Government rejected that request by reply dated 14th September, 2001 on the ground that the petitioner's probation period came to an end prior to 14th May, 1980 and that it is only if employee/officer is continued on long term basis on or after 14th May, 1980 that the benefit of the said resolution can be given. As per the said resolution, the increments for the period of probation are to be released after successful completion of the probation period.

3. The learned counsel for the petitioner points out that the relevant statutory rule on the subject is Rule 50 (a) of the BCSR, relevant portion of which reads as under:-

"50." The following provisions prescribing the conditions on which service counts for increments in a time scale:-

(a) Subject to rules 41, 43, 66 and 67, all duty in a post on a time scale counts for increment in that time scale."

Exception (1) to Rule 50 (a) reads as under:-

"Exception (1): A Government servant who is appointed directly to a post for which a fixed probationary pay is prescribed during the period of probation, shall not be permitted to earn increments during the period of probation. An increment at normal rate may be granted immediately on completion of period of probation."

The learned counsel for the petitioner submits that Exception (1) to the said rule is not applicable in the instant case because it is only if an appointment is made directly to a post for which fixed probationary pay is prescribed during the period of probation that the Government servant is not permitted to earn increments during the period of probation.

But in the instant case, the petitioner was not appointed to a post for which fixed probationary period is prescribed during the period of probation. The petitioner's appointment was made in a running time scale as stated above.

The learned counsel for the petitioner points out from the aforesaid decision dated 1st July, 1983 that Rule 6 of the Pay Rules was invoked by the State Government in the aforesaid case also but the Court did not accept that contention. The learned counsel further points out from page 12 of the aforesaid decision (running page 45 of the petition) that this Court has laid down a principle that if the probationary terms do not provide that the probationer is not entitled to get increments during the period of probation, or that he is entitled to get only fixed pay during the period of probation, Resolution dated 14th May, 1980 can have no application. This Court has also laid down the principle that if there is nothing in the appointment order or the rules or the resolutions which prevents the petitioner

from earning increments during the period of probation, the petitioner would be entitled to earn increments even during the period of probation though the increments may be released after successful completion of the probationary period.

4. On the other hand, Mr Kogje learned AGP for the respondent submits that since the Government Resolution dated 14-5-1980 is to be applied only in a case where the prescribed period of probation is completed after 14-5-1980 (as clarified by Government Resolution dated 11-5-1981) and since the petitioner's probation period was over and the petitioner was appointed on long term basis w.e.f. 1-4-1979, the petitioner cannot be given the benefit of the Government Resolution dated 14-5-1980.

5. The submission made on behalf of the respondents is misconceived in view of the aforesaid judgment dated 1-4-1983 in Special Civil Application No.5037 of 1981 wherein it has been clearly held that even prior to 14-5-1980, the provisions of Rule 50 of the BCSR provided that if the order of appointment or the rules in question do not provide that the probationer is not entitled to get increment during the period of probation or that he is entitled to get only fixed pay during the period of probation then only the employee or officer would not get any increment even upon successful completion of the probationary period. But if the appointment order or the rules do not prevent the officer from earning the increments during the period of probation though such increments are to be released after successful completion of probationary period, the employee would be entitled to get all the increments for the entire period of probation and not merely one increment as granted to the petitioner in the facts of the instant case.

5. In view of the aforesaid clear pronouncement of this Court, the petition deserves to be allowed and is accordingly allowed. The impugned communication dated 14-9-2001 (Annexure F) is hereby quashed and set aside and the respondents are directed to give the petitioner the benefit of annual increments for the entire period of probation between 24-9-1975 and 1-4-1979.

It is clarified that one increment already given to the petitioner earlier shall be adjusted against the increments to be granted to the petitioner pursuant to this judgment.

The directions given in this judgment shall be complied with within two months from the date of receipt

of the writ of this Court or a certified copy of this judgment, whichever is earlier.

6. The petition is accordingly allowed. Rule is made absolute with no order as to costs.

(M.S. Shah,J)

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